

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COXCOM, INC.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-394-KAJ
)	
USA VIDEO TECHNOLOGY, CORP.)	
)	
Defendant.)	
)	
_____)	

**COXCOM'S ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANT
USA VIDEO TECHNOLOGY CORPORATION'S COUNTERCLAIMS**

Plaintiff Coxcom, Inc. ("Coxcom") responds to Defendant's ("U.S. Video") counterclaims as set forth below. Coxcom incorporates fully by reference herein its allegations and prayer for relief set out in its Complaint for Declaratory Judgment.

ANSWER TO COUNTERCLAIMS

15. Coxcom admits that U.S. Video filed its Answer and Counterclaims contemporaneously with a motion to dismiss or transfer and further admits that U.S. Video purports to set forth counterclaim allegations in Paragraphs 16 through 24 of its Answer and Counterclaims.

16. On information and belief, Coxcom admits the allegations of Paragraph 16 of U.S. Video's counterclaims.

17. Coxcom admits that it is a Delaware corporation and that it has a place of business at 1400 Lake Hearn Drive, Atlanta, Georgia, but otherwise denies the allegations of Paragraph 17 of U.S. Video's counterclaims.

18. Coxcom admits that U.S. Video purports to state a counterclaim for patent infringement and that jurisdiction over this action is proper, but otherwise denies the allegations of Paragraph 18 of U.S. Video's counterclaims.

19. Coxcom admits that venue is proper in the District of Delaware, but otherwise denies the allegations of Paragraph 19 of U.S. Video's counterclaims.

20. Coxcom admits that it operates digital cable systems that provide video-on-demand services, but otherwise denies the allegations of Paragraph 20 of U.S. Video's counterclaims.

21. Coxcom admits that a document purporting to be a copy of U.S. Patent No. 5,130,792 is attached to U.S. Video's Answer and Counterclaim, but otherwise denies the allegations of Paragraph 21 of U.S. Video's counterclaims.

22. Coxcom admits that 35 U.S.C. § 282 provides that a patent shall be presumed valid, but otherwise denies the allegations of Paragraph 22 of U.S. Video's counterclaims.

23. Coxcom is without sufficient knowledge to admit or deny the allegations of Paragraph 23 of U.S. Video's counterclaims.

24. Coxcom denies the allegations of Paragraph 24 of U.S. Video's counterclaims.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Coxcom has not infringed, contributed to the infringement of, or induced the infringement of any claim of the '792 patent.

Second Affirmative Defense

On information and belief, the '792 patent is invalid under one or more provisions of the patent laws of the United States, including 35 U.S.C. §§ 102, 103, and/or 112.

Third Affirmative Defense

On information and belief, U.S. Video's prayer for relief is barred by waiver, laches, acquiescence, and/or estoppel.

Fourth Affirmative Defense

On information and belief, the '792 patent is unenforceable under the laws of the United States.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Rodger D. Smith II

William M. Lafferty (#2755)
Rodger D. Smith II (#3778)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
(302) 658-9200
rsmith@mnat.com
Attorneys for Plaintiff Coxcom, Inc.

OF COUNSEL:

Mitchell G. Stockwell
Candice C. Decaire
KILPATRICK STOCKTON LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309-4530
(404) 815-6214

September 13, 2006

CERTIFICATE OF SERVICE

I, Rodger D. Smith II, hereby certify that on September 13, 2006, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Richard K. Herrmann
MORRIS, JAMES, HITCHENS & WILLIAMS

I also certify that copies were caused to be served on September 13, 2006 upon the following in the manner indicated:

BY HAND

Richard K. Herrmann
MORRIS, JAMES, HITCHENS & WILLIAMS
222 Delaware Avenue, 10th Floor
Wilmington, DE 19801

BY FEDERAL EXPRESS

Edward W. Goldstein
GOLDSTEIN, FAUCETT & PREBEG, LLP
1177 West Loop South, Suite 400
Houston, TX 77027

/s/ Rodger D. Smith II
Rodger D. Smith II (#3778)
MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Wilmington, DE 19801
(302) 658-9200
rsmith@mnat.com